IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.702 OF 2007

Shri.Laxminarayan Vishwanath Arya, Aged 52 years, Occ: Business, Residing at Ravishankar Girdharilal Sharma Chawl, Room No.2, Tanaji Nagar Bandongori, Kurar Village, Malad East, Mumbai-400097 ..Petitioner

Vs

1. The State of Maharashtra Through Sr.Inspector of Police, Vakola Police Station, Mumbai 4000 055
2. M/s.Lovely Hotel Pvt.Ltd. (A private Ltd. Company registered under the Companies Act, 1956) having office at Plot No.53, TPS-IV, Santacruz (E), Mumbai-400055
3. Manoj B.Gupta, Adult,
4. Vimal K.Gupta, Adult,
5. Bhupendra K.Gupta, Adult,
6. Virendra K.Gupta,
7. Dinesh K.Gupta, Adult, All Directors of the Respondent No.2, having their address at Lovely Hotels Pvt. Ltd. Plot No.53, TPS-IV, Nehru Road, Santacruz (E), Mumbai-4000055 ..Respondents

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Mr.K.H.Giri Advocate for Petitioner
Mr.S.R.Borulkar P.P. for Respondent No.1-State
Mr.R.S.Mishra Advocate for Respondent Nos. 2,3,5,6 & 7.

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CORAM: R.M.S.KHANDEPARKAR, AND SMT.V.K.TAHILRAMANI, JJ.
DATE : OCTOBER 05, 2007

ORAL JUDGMENT: [PER R.M.S.KHANDEPARKAR,J,]:

1. The learned advocate for the Respondent Nos.2, 3, & 5 to 7 have placed on record the xerox copy of the Death Certificate of Respondent No.4. The same discloses that the Respondent No.4 expired on 8th February, 2000, much prior to the filing of the petition as the petition was filed on 10th April, 2007. Consequently the name of Respondent No.4 is directed to be struck off from the cause title.

2. Heard. Rule. By consent, rule is made returnable forthwith.

3. In this petition, the Petitioner has challenged the order dated 24th January, 2007 passed by the learned Metropolitan Magistrate, 32nd Court, Bandra in C.C.No.5/M/2007 whereby while referring the matter for investigation in exercise of powers under Section 156(3) of Cr.P.C. the learned Magistrate has directed the police authorities not to arrest the accused persons without permission of the Court. The challenge in the petition is restricted to that part of direction which requires

the police authorities to take prior permission of the Court for arresting the accused.

4. When the matter came up for admission, the Division Bench hearing the matter considered it appropriate to refer the matter to the larger Bench in view of the divergent views expressed in the decisions viz. **Jagannath Singh V. Dr.Shri.Ajay Upadhyay & Anr., 2006 Cri.L.J. 4274** and **M.C.Abraham & Ors. V. State of Maharashtra & Ors., 2003 Bom.C.R. (Cri.) 650.** Consequently, the Full Bench of this Court under its judgment dated 19th July, 2007, have answered the three different questions which were referred for consideration and has held that it is neither obligatory nor mandatory for a police officer to obtain the leave of the Court before arresting an accused against whom FIR is registered pursuant to the order passed by the learned Magistrate under Section 156(3) of the Code of Criminal Procedure, 1973. It has been further observed that the exercise of discretion by the arresting officer, should be exercised with greater sensitivity and in accordance with the settled canon of criminal jurisprudence, while keeping the facts and circumstances of each case in

mind and it is reminded to the Investigating Agencies that order under Section 156(3) of Cr.P.C. may be passed by the Court as a result of failure to perform its duty on the part of the Investigating Agencies. It has been further held by the Full Bench that the police officer or a person empowered to arrest, may arrest a person without intervention of the Court subject to the limitations specified under the provisions of the Code and in that regard, reliance is placed in the decision of the Apex Court in the matter of **M.C.Abraham (Supra).** It was further ruled that judgment of the Division Bench of this Court in **Jagannath Singh (Supra)**, does not lay down the correct proposition of law. Consequently, the point as to whether the police requires prior permission of the Court for arresting the accused consequent to the direction received from the Magistrate for conducting investigation in terms of Section 156(3) is well settled by the decision of the Full Bench. It has been clearly held that police authority does not require such prior permission. Undoubtedly, the power in that regard has to be exercised with required restraint and bearing in mind the provisions of law in relation

to arrest and detention. Consequently, the impugned order of the learned Magistrate to the extent it directed that the accused should not be arrested without permission of the Court, cannot be sustained.

5. Hence, the petition succeeds. The impugned order to the extent it directs the police authority not to arrest the accused without prior permission of the Court is hereby quashed and set aside. It is made clear that remaining portion of the impugned order is not interfered with. Rule made absolute accordingly in above terms with no order as to costs.

[R.M.S.KHANDEPARKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]